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No. 04-547

Supreme Court, U.S.
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In The

Supreme Court of the United States

PAUL TRUNNELL,

Petitioner,

vs.

SUMMIT COUNTY, UTAH,
JAMES SORENSON & CONNIE SORENSON,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of The State Of Utah

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Respondents' Brief in Opposition underscores the reason this Honorable Court needs to review this case. The Petitioner, Paul Trunnell, represents Americans everywhere who work their entire life to fulfill the American dream of property ownership only to lose it through the unfettered discretion of county employees who ignore their duties in a quest to collect taxes. Americans like Paul Trunnell, common working class people unable to hire expensive lawyers to protect their constitutional rights, "kick against the mighty Sovereign" with little chance of protection.

STATEMENT OF FACTS

In an attempt to justify the County's conduct, Respondents' Brief in Opposition misconstrues or omits the following significant facts:

1. Prior to May 24, 2001, Petitioner Paul Trunnell was the *sole* fee title owner of approximately eighty-eight (88) acres of land located within Summit County, Utah. (R. 2; 100; 113; 116; 1392:10-12)

2. On January 23, 2001, the Summit County Treasurer sent Petitioner a Delinquent Tax Billing statement that contained the following notice of tax sale:

> In accordance with Utah Code 59-2-1343 to 59-2-1351, after March 15, 2001 your property will be sold at public auction for non-payment of taxes. This sale will be held at the Summit County Courthouse on May 31, 2001. (R. 830).

3. The Delinquent Tax Billing was the only tax sale notice Petitioner actually received prior to the May 24, 2001 tax sale, and Petitioner relied on it to his detriment. (R. 825:¶3-826:¶8)

4. In early April 2001, the Summit County Auditor, Blake Frazier, unilaterally determined that the Summit County tax sale would be held on May 24, 2001, one week before the prior noticed date. (R. 517:5-519:14)

5. On April 30, 2001, the Summit County Auditor caused a changed Notice of Tax Sale to be prepared and mailed by certified and first class mail to Petitioner at, among other places, PO Box 66, Heber City, Utah, which was not received by Petitioner and was returned to the County by the U.S. Postal Service, marked "Return to Sender." (R. 552:¶5; 560; 852)

6. Another copy of the changed Notice of Tax Sale was sent to Petitioner by certified and first class mail to 769 Lower Pack River Road, Sandpoint, Idaho. (R. 849, Exhibit "I")

7. The Clark Fork, Idaho Post Office stamped the Notice of Tax Sale on May 7, 2001, indicating that it arrived in Clark Fork, Idaho on or before May 7, 2001, and it was "sometime thereafter" delivered to Bobbi Trunnell. (R. 849) This changed notice was signed for by "Bobbi Trunnell" without date. (R. 849, Exhibit "I")

8. Summit County did not know who Bobbi Trunnell was or her relationship to Petitioner, but did know that she was not the fee title "owner" of the property as mandated by Utah Code Ann. § 59-2-1351. (R. 866:2-5; 869:9-23)

9. There is nothing in the record that reflects that Bobbi Trunnell received the Notice of Tax Sale prior to May 24, 2001.

10. Petitioner, the owner of the property, did not receive the changed Notice of Tax Sale prior to the sale of his property. (R. 826:¶8; 978-979)

11. Summit County alleges that Mr. Trunnell's business agent, Gary Campbell, signed for the certified letter thus giving Mr. Trunnell notice. However, Mr. Campbell was a mere part-time bookkeeper for Park City Stone and not a business agent. There is no evidence that Mr. Campbell ever delivered the County's changed notice to Mr. Trunnell. (R. 1368-1369)

12. Believing the tax sale was set for May 31, 2001 as noticed to him, Petitioner called Blake Frazier on May 15, 2001 to discuss postponement or cancellation of the pending sale. Petitioner neither called about the changed Notice of Tax Sale nor confirmed to Mr. Frazier that he had received the changed Notice of Tax Sale. (R. 824:4-826)

13. Mr. Frazier has acted with the express, implied, or apparent discretionary authority of Summit County for years to enter into agreements with taxpayers to postpone the tax sale of their property and has done so without written memorialization. (R. 880:6-885:3; 825:¶5; 885:7-25; 904-925)

14. Mr. Frazier told Petitioner that he would postpone the sale if Petitioner would make a substantial payment of $2,000.00 on the delinquent taxes by mail and pay the entire delinquent balance within 30 days. (R. 825-826)

15. Mr. Frazier did not tell Petitioner that he had to make payment of the $2,000.00 before May 24, 2001, but merely told him that he needed to mail it in. (R. 825:¶5)

16. Relying upon Mr. Frazier's word, and believing that the May 31, 2001 tax sale had been postponed, Petitioner wrote a check for $2,000.00 and sent it to Summit County on May 16, 2001. (R. 825:¶¶4-6; 818-819)

17. The partial payment from Petitioner of taxes on SS-75 never reached Summit County because Petitioner accidentally put a one (.01) cent stamp on the envelope. The U.S. Post Office subsequently lost the envelope, resulting in its delayed return to Petitioner. (R. 4:¶15; 818-819, Exhibit "J"; 825:¶6-826; 1343:5-1344:6)

18. On or about May 21, 2003, Petitioner called Mr. Frazier to see if he had received the $2,000.00 check, and got a recording. Petitioner left a message and phone number, and told Mr. Frazier he had sent the check for $2,000.00, was working on getting the financing for the remaining $4,000.00 he owed Summit County, and left his phone number if there were any questions. (R. 4:¶17; 1342:12-1343:14)

19. Unbeknownst to Petitioner, on May 24, 2001, the Summit County Auditor, without even a phone call to Petitioner, sold the entire eighty-eight (88) acre property to James and Connie Sorenson as bidders at the tax sale. (R. 553:¶8; 570-573; 520:14-24; 521:13-23)

ARGUMENT

There are three prongs to Petitioner's constitutional argument in this case: Due Process, Equal Protection, and the right to a trial before one's peers. Respondents' Brief in Opposition addresses the "notice" aspect of Petitioner's Due Process argument, but fails to address the remaining arguments. Petitioner respectfully draws this Court's

attention to the following Due Process and Equal Protection claims.

I. The Due Process Prong

The primary purpose of real estate tax sale laws is to ensure the collection of taxes, not to deprive citizens of their property rights. *See Rivera v. Carbon County Tax Claim Bureau,* 857 A.2d 208 (Pa. Cmwlth. App. 2004). To guard against the deprivation of property without due process of law, courts throughout the United States require strict compliance with tax sale notice provisions. *See Topps v. County of Walworth*, 659 N.W.2d 177 (Wis. App. 2003); *Fulton v. Cornelius*, 758 P.2d 312 (N.M. App. 1988); and *Fivas v. Petersen*, 300 P.2d 635 (Utah 1956).

In *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), this Court invalidated a tax sale where a mortgagee was only given published notice of the tax sale and not personal notice. In so doing, the Court stated:

> Notice by mail or other means as ***certain to ensure actual notice*** is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of *any* party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable. Furthermore, a mortgagee's knowledge of delinquency in the payment of taxes is not equivalent to notice that a tax sale is pending. The latter "was the information which the [County] was constitutionally obliged to ***give personally*** to the appellant[.]"

Id. at 800 (quoting *Schroeder v. City of New York,* 371 U.S. 208, 214 (1962)) (Emphasis added).

Respondents argue that the case of *Dusenbery v. U.S.*, 122 S.Ct. 694, 534 U.S. 161, 151 L.Ed. 2d 597, is similar to and governs this case. Contrary to this argument, *Dusenbery* does not concern a county's tax sale, did not require a strict compliance standard, did not deal with the sale of real property, and did not require the interpretation of a statute stating that notice "shall" be "sent by certified and first class mail to the last-known recorded owner." The forfeiture and sale of real property by tax sale is different from the administrative forfeiture of cash seized during a search of a residence, as occurred in *Dusenbery*, and is treated differently by State and Federal courts.

The Utah tax sale statute establishes a "reasonable man" standard. If it is not absolutely clear that the statutory notice requirements have been met, then the County had the duty to postpone the sale. Summit County abused this standard by having ample evidence of problematic issues and selling Petitioner's property anyway. A simple postponement – as often occurs – would have been fair and reasonable. Yet the County wanted to "flex its muscle."

The law of this land with regard to tax sales ought to be "actual" notice (certified mail by restricted delivery) or the sale should be postponed, particularly in cases such as this where the first notice was wrong. Restricted delivery ensures that mail is delivered to the person specified and requires that the addressee sign for it.

In the context of a tax sale in Utah, if an owner does not receive actual notice, it results in the permanent loss of that person's real property because one cannot set aside a tax sale pursuant to Rule 60(b) for mistake, inadvertence, surprise or excusable neglect. Due Process should require the State to provide property owners actual,

personal notice by restricted delivery, so that the last-known recorded owner receives notice prior to a tax sale. At the least, the State should be required to motion the Court for notice by publication.

II. The Equal Protection Prong

The Summit County Auditor does not have statutory direction to make agreements to postpone tax sales. However, Summit County's informal policy gives the Auditor unfettered authority to postpone, extend, or otherwise defer a tax sale without any ascertainable standards. Such discretion can be abused. The Auditor should not be able to renege on informal agreements to the detriment of the taxpayer, as occurred here.

On May 15, 2001, Petitioner reached an oral agreement with the Summit County Auditor to postpone the tax sale. During a telephonic conversation on May 15, 2001, Blake Frazier promised Petitioner that the tax sale would be postponed if Petitioner would make a substantial payment of $2,000.00 by mail on the delinquent taxes and pay the entire delinquent balance within thirty (30) days. (R. 825:¶5) Mr. Frazier did not tell Petitioner at any time that he had to make payment of the $2,000.00 before May 24, 2001, but merely told him that he needed to mail it in. (R. 825:¶5) Unaware of the changed date of the tax sale, Petitioner sent a check for $2,000.00 on May 16, 2001, and arranged for financing to pay off the remainder of the delinquent taxes.

Although Summit County's agreement with Petitioner was (at the least) ambiguous as to when payment had to be made, Petitioner kept his end of the bargain by mailing a check on May 16, 2001. On May 21, 2001, Petitioner (believing the sale date to be May 31, 2001) called the

Auditor's office to confirm receipt of the check, but got a recorded message. Petitioner left a voice mail message and his phone number, but did not receive a return call. Unbeknownst to Petitioner, and in violation of the agreement, Summit County withdrew its promise and sold Petitioner's $2 million property for $31,000 on May 24, 2001.

Petitioner reasonably relied upon Mr. Frazier's promise to postpone the sale. Mr. Frazier reneged on that promise and in so doing violated Petitioner's right to Equal Protection under the Fourteenth Amendment.

The law in this country should describe ascertainable standards for making agreements to postpone tax sales. No such laws or procedures exist in Utah. Such a void provides the opportunity for parties to be discriminated against, treated unequally, or worse, lose their property as occurred here.

III. Customary Safeguards Of American Law Were Violated Here

A. No Review Process

Petitioner's constitutional rights were denied without the customary safeguards of American and Utah law. No second chance – no review process – exists under Utah's tax sale statute. In all other final judgments or decrees, there is a built in opportunity to correct a mistake. A cursory look at these constitutional safeguards makes this point. A judge is allowed a second look at a jury verdict before finality upon motion for judgment notwithstanding the verdict. Pursuant to a Rule 60(b) motion, a default judgment can be set aside within three months upon a showing of mistake or excusable neglect. Judicial sales

provide a six month right of redemption for the property owner. Trials that need more evidence have Rule 59 to allow motions to alter or amend the judgment based on mistake or newly discovered evidence.

Nothing akin to these procedures exists in Utah's tax sale statute. Once a tax deed is issued, the process is over. There should be a review process with a judge within some reasonable redemption period before the unassailable tax deed becomes final.

B. Right Of Trial Was Lost

Significant factual disputes existed in this case. For example: Was the January 23, 2001 delinquent tax billing statement "notice" of a sale or "estimated" notice? What were the terms of the agreement reached between Petitioner and the Summit County Auditor? Did Petitioner justifiably rely on the oral agreement? Did Bobbi Trunnell receive timely notice of the changed tax sale date?

Despite these significant factual disputes, summary judgment was granted. Therefore, Petitioner lost his right to a jury trial and the chance to have his constitutionally mandated "day in court."

CONCLUSION

It is clear from the notice that Petitioner received on January 23, 2001 that Summit County's tax sale was originally set for May 31, 2001. It is also clear from the record that Petitioner never received notice that Summit County had rescheduled the tax sale for May 24, 2001. Moreover, it is clear that the Summit County Auditor led

Petitioner to believe that the May 31, 2001 sale would be postponed. A series of bizarre circumstances then occurred that cost Petitioner his property and means of making a living.

The law loathes the taking of property from a taxpayer without Due Process. Summit County's informal polices and failure to comply with reasonable statutory notice requirements cost Petitioner his property and his means of making a living, and violated his constitutionally protected rights of Equal Protection and Due Process.

Petitioner requests a Writ of Certiorari before this fine Court.

RESPECTFULLY SUBMITTED this 30th day of December, 2004.

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